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Letter dated 26 February 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Madagascar submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

* Reissued for technical reasons.

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Annex

[Original: French]

Note verbale dated 21 February 2002 from the Permanent Mission of Madagascar to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Madagascar to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, and has the honour to transmit the report of the Republic of Madagascar on the implementation of Security Council resolution 1373 (2001) (see annex).

The Permanent Mission of Madagascar to the United Nations takes this opportunity to renew to the Chairman of the Counter-Terrorism Committee the assurances of its highest consideration.

Appendix

Report of the Republic of Madagascar on the implementation of resolution 1373 (2001) concerning counter-terrorism

The Government of Madagascar hereby submits to the Counter-Terrorism Committee the present report, pursuant to paragraph 6 of resolution 1373 (2001) adopted by the United Nations Security Council on 28 September 2001. The report briefly describes the measures introduced to implement this resolution.

In submitting this report, Madagascar seeks to reaffirm its commitment to the principles and objectives of the Charter of the United Nations and to highlight its willingness to contribute to the eradication of terrorism.

I. National mechanisms for the prevention and suppression of terrorism

Although Madagascar has no specific legislation on terrorism, its body of laws nevertheless contains a broad range of provisions to prevent and suppress terrorism, such as the death penalty, imprisonment and hard labour, which may be adapted as necessary to cover various terrorist acts.

- **Prevention**

To date, Madagascar has not concluded any international agreement on terrorism. However, if there is a strong suspicion of terrorism, and at the demand of the country concerned, Madagascar will, in coordination with that country, put security measures in place for the surveillance of its Embassy and other associated entities, as in the case of the United States of America.

- **Suppression**

There are currently no specific measures on "international terrorism" in Malagasy legislation but certain activities which may be related to terrorism may, from the perspective of suppression, be covered implicitly by various sections of the Penal Code, for instance:

A. Crimes and offences against the external security of the State

Article 76, paragraph 3:

- Destruction, wilful damage caused to a ship, aerial navigation appliance, equipment, construction or installation used for the purpose of national defence, by nationals.
- Wilful participation in an act committed by a group and by an overt use of force, aimed at and causing wilful damage to equipment or supplies intended for national defence.

Article 77:

If perpetrated by a foreigner, the acts mentioned in the preceding article shall be characterized as espionage.

Article 82, paragraph 1:

Entry into a fortress, defence works, military post, arsenal, vessel, aerial navigation appliance, military vehicle ...

The death penalty is the punishment for crimes committed under articles 76 and 77 and, in general, attacks threatening the external security of the State committed in times of peace are punishable by a term of imprisonment of one to five years and a fine of 180,000 to 1,800,000 Malagasy francs. The crimes mentioned in article 82 may be punishable by up to 10 years' imprisonment and a fine of 3,600,000 Malagasy francs.

B. Crimes against the internal security of the State

Article 91:

1st paragraph: Attack with the intention of causing devastation and massacre in one or more local administrative areas (punishable by the death penalty).

3rd paragraph: Manoeuvres and acts likely to compromise public safety, or cause serious political disturbances (punishable by a term of imprisonment of one to five years, the suspension of civic, civil and family rights, and local banishment.

Article 95:

Destruction of buildings, warehouses, arsenals, vessels or other property belonging to the State by arson or mines (punishable by the death penalty).

C. Resistance and other breaches committed against public authority

Article 210:

Attack, violent resistance and assaults against the police (rebellion) by more than 20 armed persons (punishable by hard labour for a specific term).

Articles 212 and 218:

Rebellion led by one or two armed persons (punishable by a term of imprisonment of one month to two years and by a fine of 25,000 to 150,000 Malagasy francs).

Article 257:

Degradation of monuments and other objects intended for public use (punishable by a term of imprisonment of one month to two years and a fine of 25,000 to 100,000 Malagasy francs).

D. Criminal association

Articles 265 and 266:

Association formed, irrespective of the duration or number of its members, with a view to preparing or committing crimes or misdemeanours against persons or property (punishable by hard labour for a specific term if the acts that are carried out

or planned constitute crimes, and by a term of imprisonment of six months to five years and/or a fine of 180,000 to 1,800,000 Malagasy francs, if the acts constitute offences, as well as by suspension of civic, civil and family rights and local banishment).

E. Destruction, degradation, damages

Article 434:

- Wilful destruction by fire of buildings, ships, boats, warehouses, building sites while inhabited or serving as dwellings, cars or wagons whether carrying passengers or not, but forming part of a convoy (punishable by the death penalty).
- Wilful destruction of buildings, ships, boats, warehouses, building sites which are uninhabited or not designated for occupancy (punishable by hard labour for life if the objects do not belong to the perpetrator of the crime, and by hard labour for a specific term where there is injury to others).
- Igniting any object which is placed in such a way as to cause the spread of fire (punishable by the same sentence if the fire has been set directly to the objects mentioned).
- In the event of death of one or more persons, serious injury or disability, the death penalty is incurred.

Article 435:

A sentence of the death penalty or hard labour, according to the distinctions drawn in the preceding article, shall also be incurred for the wilful destruction, in whole or in part, or the attempted destruction by a mine or other explosive substance, of buildings, dwellings, dykes, roads, ships, boats, any type of vehicle, warehouses, building sites or their outbuildings, bridges, public or private roadways and in general, real or personal property of any type whatsoever, and for the placing of an explosive device, with criminal intent, on a public or private road.

Article 436:

The threat of arson or destruction by mine or any other explosive substance of the objects listed in article 435 (punishable by a term of imprisonment of two to five years and a fine of 25,000 to 225,000 Malagasy francs, suspension of civic, civil and family rights and local banishment, and, if necessary, with an option to impose or waive additional local banishment if the threat is not accompanied by any orders or conditions).

Article 437 bis (Ordinance No. 77-036 of 29 June 1977):

Destruction or attempted destruction by any other means than those provided for in articles 434 and onwards of the Penal Code, of buildings, dwellings, dykes, roads, ships, boats, aircraft, all types of vehicles, warehouses, building sites or their outbuildings, bridges ... (punishable by a term of imprisonment of five to ten years).

Article 458:

Destruction, degradation or attempted destruction or degradation by fire or any other means, in whole or in part, of any type of vehicle belonging to others

(punishable by a term of imprisonment of two to five years and a fine of 25,000 to 1,000,000 Malagasy francs, without prejudice to the application of the provisions of articles 434 and 435, as necessary).

F. Murder, other capital crimes, threats of attack against persons

Article 302: Assassination (punishable by the death penalty)

Article 303: Crimes committed with torture or acts of barbarity (punishable by the death penalty)

Article 304: Murder preceding, accompanying or following another crime (punishable by the death penalty)

Murder (punishable by hard labour for life).

G. Intentional wounding and assault

Article 309:

- Intentional wounding and assault resulting in a person's inability to work for more than 20 days (punishable by a term of imprisonment of two to five years and a fine of 25,000 to 100,000 Malagasy francs);
- Assault resulting in mutilation, amputation, blindness or other disability (punishable by a term of imprisonment of five to ten years);
- Intentional assault and wounding causing death (manslaughter) (punishable by hard labour for a specific term).

Article 310:

Intentional wounding and assault with malice aforethought or ambush (punishable by hard labour for life if it results in death; by hard labour for a specific term if the assault resulted in mutilation, amputation, the loss of the use of a limb, blindness or other disability; by a term of imprisonment of five to ten years in the cases provided for under article 301, paragraph 1).

Article 311:

Wounding, assault and other violent behaviour not resulting in illness of persons or in their inability to work (punishable by a term of imprisonment of six days to two years and a fine of 25,000 to 90,000 Malagasy francs, or by only one of these penalties, or by a term of imprisonment of two to five years and a fine of 25,000 to 150,000 Malagasy francs, if there was malice aforethought or an ambush).

Article 318, paragraph 1:

Violence against persons, destruction or damage of property as a result of planned action overtly carried out by a group (punishable, without prejudice to the infliction of heavier penalties provided for by law, by a period of imprisonment of one to five years).

H. Arrest and illegal confinement of individuals

Article 341:

Provides for a punishment of hard labour for a specific term for anyone guilty of detaining another person against his will, depriving him of his freedom, detaining him or illegally confining him and for anyone who provides premises for such detention or illegal confinement.

Article 342:

Increases such penalty to hard labour for life where the detention or illegal confinement was for more than a month.

Article 343:

Reduces the penalty to a term of imprisonment of two to five years for offenders who have not yet been prosecuted and who shall have freed the persons arrested, falsely imprisoned or detained before the tenth full day of such arrest, detention or false imprisonment is over.

Article 344:

Provides for a penalty of hard labour for life if the person arrested, illegally confined or detained received death threats, and for a death sentence if that person was subjected to physical torture.

I. Offences against children and minors

Article 345, paragraph 1:

Kidnapping, harbouring of a kidnapped child (punishable by imprisonment).

Article 355:

Kidnapping and seduction of a minor under 15 years old by force or fraud (punishable by life imprisonment with hard labour).

Such penalties are reduced to hard labour for a specific term if the minor is returned or found alive before the sentence.

However, kidnapping shall carry the death penalty if it results in the death of the minor.

It should also be noted that some articles of the code of military justice listed below provide for the punishment of:

Article 136:

Paragraph 2: a term of imprisonment of three to five years for persons numbering at least four on board a military ship or aircraft who rise up in arms.

Paragraph 3: a term of imprisonment of five to ten years for any group of at least eight individuals who engage in armed violence.

The maximum penalty of hard labour for a specific term (20 years) for the instigators of such revolt.

Article 137:

A term of imprisonment of five to ten years for any persons on board a military ship or aircraft convicted of conspiring to undermine the authority of the captain or the security of the vessel or aircraft (for there to be a conspiracy, there needs only to be an agreement between two or more individuals to undermine the authority of the captain, discipline or security of the ship or aircraft).

Article 154:

Hard labour for life for persons on board a military ship or aircraft who as a group caused any harm through the use of arms, overt force or violence against persons.

Article 155:

The death penalty for anyone on board a military ship or aircraft who deliberately sets fire to or damages by any means or renders unsuitable for immediate use structures, buildings, works, railway lines, telegraph lines or sets, telephones or telephone lines, telecommunications lines or stations, balloon posts, airplane docking stations, building sites, vessels, ships, and aircraft used for national service or national defence.

Article 156:

Hard labour for a specific term for attempting the same offences in times of peace.

Article 157:

Also provides for a punishment of hard labour for a specific term for anyone on board a ship or aircraft who intentionally destroys, sets fire to, causes to be destroyed or causes fire to be set to or renders unsuitable for any direct use any equipment or movable property used for national service or national defence.

* * *

It should be noted that this enumeration is not exhaustive. It only serves as an indication that, while there is no specific terrorism offence under Malagasy law, there is a wide range of penalties ranging from imprisonment, the death penalty to hard labour, which may be adapted as necessary to cover various terrorist acts.

II. At the international level

Madagascar has ratified four of the 12 main international instruments aimed at preventing and combating terrorism, namely:

- The 1988 Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation;
- The 1971 Montreal Convention for the Suppression of Uniawful Acts against the Safety of Civil Aviation;
- The Hague Convention of 1970 for the Suppression of Unlawful Seizure of Aircraft;

- The 1963 Tokyo Convention on Offences and Certain other Acts Committed on Board Aircraft.

These conventions and protocols are part of Madagascar's domestic law.

As far as the measures taken or planned by Madagascar pursuant to Security Council resolution 1373 (2001) adopted on 28 September 2001 are concerned, the Government of Madagascar has established an inter-ministerial unit, coordinated by the Ministry of Foreign Affairs, which is primarily responsible for carrying out the formalities required for Madagascar's accession to all the regional and international instruments concerning counter-terrorism.

In December 2001, the Council of Ministers also adopted bills concerning the ratification by Madagascar or its accession to the following agreements:

1. **Ratification:**

- The 1999 International Convention for the Suppression of the Financing of Terrorism;
- The 1997 International Convention for the Suppression of Terrorist Bombings;
- The 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection;
- The Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism.

2. **Accession:**

- The 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- The 1979 International Convention against the Taking of Hostages;
- The 1979 Convention on the Physical Protection of Nuclear Material;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;
- The 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

These draft laws will be submitted to the National Assembly and the Senate at the opening of their next session in May 2002.

The next step will be the adoption of the regulatory and legislative measures to be applied in the Malagasy context. Strengthening Madagascar's cooperation with its partners in the areas concerned, particularly at the bilateral and regional levels, is also on the agenda.

It should also be noted that the provisions on extradition contained in the Agreements of 4 June 1973 on cooperation between France and Madagascar are applicable to international terrorism; the two States undertake to hand over, on a reciprocal basis, persons found in the territory of one State who have been prosecuted or sentenced for terrorism by the judicial authorities of the other State. The two States shall not, however, extradite their respective nationals.

III. Conclusion

Madagascar's needs in the context of the implementation of resolution 1373 (2001) are great. While these needs remain to be determined, we can already point out that the elaboration of laws and regulations, and the setting up of an adequate institutional framework, require technical competencies that are lacking at present.